In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 854

HERMAN C. GROMAN, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The stipulated facts show that the Glidden Company contracted with all the stockholders of the Metals Refining Company, a competing Indiana company, to organize a new Ohio company. These companies will be referred to as Glidden, Indiana, and Ohio, respectively. Indiana's stockholders, of whom petitioner is one, were to transfer to Ohio all their stock in Indiana, and were to receive in exchange 5,276 shares of prior preference stock of

Glidden, 5,000 shares of preferred stock of Ohio, and an amount of cash to be computed according to provisions of the contract. Glidden received all of the common stock of Ohio. (R. 11–14, 43–44.)

It is conceded that the cash received by Indiana's stockholders is taxable to the extent of the gain included therein and that the preferred stock of Ohio was received without recognition of gain or loss. The sole question here presented is whether Glidden stock was received without recognition of gain or loss by reason of the provisions of Section 112 (b) (3) of the Revenue Act of 1928, c. 852, 45 Stat. 791.

The court below reversed the Board of Tax Appeals and held that the transaction in question did not fall within the statutory exemption, expressing the opinion that it saw no reason for extending the meaning of the term "party to a reorganization" as defined by Congress, since the fundamental reason for exempting the receipt of stock of the new or "acquiring" company—which reason is, though not expressed by the court, the continuity of interest through the modified corporate form—does not require the exemption of the stock of a third company. We submit that the court below applied the proper principles and reached a correct result. Cf. *Bus & Trans. Corp.* v. *Helvering,* 296 U. S. 391.

However, in view of the contrary construction of the same statutory provisions adopted in *Com-*

missioner v. *Bashford*, 87 F. (2d) 827 (C. C. A. 3d), involving an almost identical transaction, we are not warranted in opposing the petition.

The Government has filed petition for a writ of certiorari in the *Bashford* case, No. 916, October Term, 1936.

Respectfully submitted.

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APRIL 1937.

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